



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I09-008 (R09-026)
by	
TERRY GODDARD ATTORNEY GENERAL	Re: Diminution of School District Boundaries Under A.R.S. § 15-460(B)
September 29, 2009	

To: Britt W. Hanson
Chief Civil Deputy County Attorney
Cochise County Attorney's Office

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), you submitted for review an opinion that you prepared for the Cochise County School Superintendent. This Office is revising the conclusion reached and issues this opinion to provide guidance concerning this matter to all school districts within Arizona.

Questions Presented

1. Can the territory that comprises Rucker Elementary School District eliminate its boundaries and thereby become unorganized territory if its citizens follow and complete the procedures set forth in A.R.S. § 15-460(B) for diminishing a school district's boundaries?
2. If so, in what manner should Rucker dispose of its assets?

Summary Answers

1. Under A.R.S. § 15-460(B), the boundaries of Rucker Elementary School District may be diminished, not eliminated.
2. Having concluded that the boundaries of Rucker may be diminished, not eliminated, under A.R.S. § 15-460(B), we do not reach the second question.

Background

The Cochise County School Superintendent is considering suspending and lapsing Rucker Elementary School District pursuant to A.R.S. § 15-469. Under that statute, the county school superintendent of a common school district in which for three months during the school year there has been a student count of less than eight pupils between the ages of six and twenty-one years may suspend the common school district and report the suspension to the board of supervisors at its next meeting. The board of supervisors may declare the common school district lapsed and attach its territory to one or more of the adjoining school districts, dispose of the property of the lapsed district, and apply the proceeds to the credit of the lapsed district. The citizens of Rucker have asked if, alternatively, Rucker may become an unorganized territory.¹ The opinion submitted for review states that Rucker citizens are interested in this alternative because their tax rate as an unorganized territory would be lower than if their property is attached to an adjacent school district. The opinion also notes that currently no residents of Rucker have school-aged children.

Analysis

The Arizona Legislature in A.R.S. § 15-441(A) expressed its intent that existing school districts shall continue in existence. “The bases of the educational organization of the county and

¹ “Organized territory” refers to land already situated within the boundaries of an organized school district. “Unorganized territory” refers to lands that are not within the boundaries of any organized school district.

state are the school districts as defined in § 15-101. Existing districts shall be continued, and new districts may be formed as provided in this title.” A.R.S. § 15-441(A).

Title 15, Article 3 (A.R.S. §§ 15-441 through -469) provides a number of methods by which school district boundaries may be changed (e.g., consolidation, unification, dissolution, lapsing, diminishing). While there are statutes addressing the manner in which an unorganized territory may become an organized school district or may join an existing organized school district, there are no statutes that directly allow a school district, in its entirety, to become an unorganized territory. Section 15-443 provides that an unorganized territory may form new common school districts. Under A.R.S. §§ 15-445 and 15-825.02, residents of an unorganized territory must join an existing adjacent school district if the annual number of certificates of educational convenience² or students attending through open enrollment in any adjacent school district exceeds one hundred fifty. Under A.R.S. § 15-460(A), a school district may change its boundaries to include adjacent unorganized territory.

The boundaries of a school district may be diminished under A.R.S. § 15-460(B). The territory excluded or removed from the school district becomes unorganized territory and will no longer be part of the school district or of any other school district. Section 15-460(B) states:

When ten per cent or more of the qualified electors residing in a school district desire that the boundaries of the school district be diminished, they may present a petition to the county school superintendent setting forth the change of boundaries desired and the reasons for such change. The county school superintendent shall prepare and transmit to the governing board of the school district proposed to be diminished a report providing specific information regarding the future availability of educational programs in the area of the district to be detached and in the area which will constitute the remaining district, availability of pupil transportation services and the financial impact on taxpayers. The governing board shall mail or distribute the report to all households located in the school district. The county school

² A certificate of educational convenience authorizes a pupil who resides in unorganized territory to attend a school in an adjoining school district or county. A.R.S. § 15-825(A).

superintendent shall submit the question of diminishing the school district boundaries to the qualified electors of the school district. The election shall be held as provided in § 15-459. A majority of the qualified electors voting on the question in the territory to remain in the existing school district and a majority of the qualified electors voting on the question in the territory to be excluded must approve the change. If approved, the change is effective from and after June 30 next following the election.

Your opinion stated:

If “diminished” can mean diminished to the point that it is eliminated, then this statute would allow elimination of a district. As a result, the former district territory would become unorganized. Nothing in the statute limits the amount of territory by which a district can be diminished.

... [I]t is our opinion that citizens of Rucker could become an unorganized territory if they followed and completed the procedures set forth in A.R.S. § 1[5]-460.B³ for diminishing a district.

The question is whether the meaning of the word “diminished” can be construed as including “eliminated.” The primary goal of statutory construction is to ascertain and give effect to the Legislature’s intent in enacting the statute. *Mejak v. Granville*, 212 Ariz. 555, 557, 136 P.3d 874, 876 (2006). The statute’s language is the best indicator of that intent. *Id.* When a statute’s plain language is clear and unambiguous, courts give effect to that language without resorting to any other rules of statutory construction. *Ariz. Dep’t of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 39, 126 P.3d 1063, 1067 (App. 2006). In applying a statute, words are given their ordinary meaning, unless the Legislature has offered its own definition of the words or it appears from the context that a special meaning was intended. *Mid Kansas Fed. Sav. & Loan Ass’n of Wichita v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991); A.R.S. § 1-213. The ordinary meaning of “diminish” is “to make, or cause to seem, smaller or less.” *Webster’s II New Riverside University Dictionary* 378 (1984). The ordinary meaning of “eliminate” is “to get rid

³ The opinion cites to A.R.S. § 14-460(B). The correct citation is A.R.S. § 15-460(B).

of: remove.” *Id.* at 425. Because these two words have such clearly distinct meanings, one cannot read “diminish” to mean elimination. Because the plain language of A.R.S. § 15-460(B) is clear, a school district may not be eliminated through use of the procedures prescribed in that statute.

However, even if the plain language were not clear, other principles of statutory construction compel the same conclusion. “A cardinal rule of statutory interpretation is to avoid, if possible, an interpretation which renders superfluous any portion of a statute.” *In re Maricopa County Superior Court No. MN 2001-001139*, 203 Ariz. 351, 354, ¶ 17, 54 P.2d 380, 383 (App. 2002). As set forth above, A.R.S. § 15-460(B) states that

[t]he county school superintendent shall prepare and transmit to the governing board of the school district proposed to be diminished a report providing specific information regarding the future availability of educational programs in the area of the district to be detached and in ***the area which will constitute the remaining district***. . . . A majority of the qualified electors voting on the question ***in the territory to remain in the existing school district*** and a majority of the qualified electors voting on the question in the territory to be excluded must approve the change.

(Emphasis added.) The statute’s references to “the remaining district” and “the territory to remain in the existing school district” indicate that the drafters of the statute intended that the procedures taken under it would not entirely eliminate the district, but, rather, make it smaller. To construe “diminish” to mean “eliminate” would render these references void or superfluous. Based on the foregoing, the only logical conclusion is that the Legislature did not intend that A.R.S. § 15-460(B) provide a means by which a school district’s boundaries could be eliminated in their entirety.

Moreover, statutory construction requires that the provisions of a statute be read and construed in the context of related provisions and in light of their place in the statutory scheme. *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175-76, 696 P.2d 724, 727-28 (App. 1985). Title 15, Article 3 (School District Boundary Provisions and Elections) (A.R.S. §§ 15-441 through -469) is Arizona’s statutory law governing the alteration of school district boundaries and contains several

provisions under which a qualifying school district may eliminate its boundaries.⁴ Section 15-461(A) requires that a transporting school district that does not offer a full-time instructional program in any grade level and transports more than 350 pupils annually to an adjacent school district or school districts be “dissolve[d].” The geographic boundaries of the transporting school district are annexed to an adjacent school district. *Id.* Under A.R.S. § 15-467(A), when all the common school districts comprising a union high school district unite into one common school district, the union high school district is “deemed to be dissolved.” The union high school district then becomes a high school district. Under A.R.S. §§ 15-461 and 15-467, the territory formerly within the school district(s) remains organized territory.

The incorporation of school districts also operates to dissolve school district boundaries. Under A.R.S. § 15-444, qualifying adjoining school districts may unite and form a union high school district. The boundaries of the formerly existing school districts are dissolved, and they are automatically incorporated into the new union high school district. *See Garrett v. Folsom*, 88 Ariz. 380, 384, 357 P.2d 130, 134 (1960). Under A.R.S. § 15-459, two or more qualifying school districts or parts of school districts may consolidate and become one new school district. In consolidation, two or more entities are dissolved and a new entity takes its place. Ariz. Att’y Gen. Op. 184-083. Under A.R.S. §§ 15-444 and 15-459, the territory formerly within the school district(s) remains organized territory. In short, there are many mechanisms in Title 15 whereby school district boundaries are changed or dissolved. If the Legislature had wanted A.R.S. § 15-460(B) to provide a

⁴ Section 5 of the federal Voting Rights Act requires that any proposed change in a district boundary that will affect voting must be submitted to the U.S. Department of Justice for preclearance to ensure that the purpose or effect of the change will not be a denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973c; 28 C.F.R. § 51.10 (2008).

means by which a school district could be entirely eliminated, it certainly could have drafted it to so provide. It did not.

Conclusion

Section 15-460(B) does not provide a mechanism through which Rucker Elementary School District can eliminate its boundaries, thereby becoming an unorganized territory in its entirety. Having so concluded, we therefore do not reach the second question regarding the manner in which to dispose of the assets of Rucker as an unorganized territory.

Terry Goddard
Attorney General